

Memorandum

TO: United States Treasury Department and Internal Revenue Service
FROM: Greater Rochester Enterprise, President & CEO, Matthew Hurlbutt
DATE: February 21, 2024
SUBJECT: Proposed Rule on Hydrogen Tax Credit 45V

Greater Rochester Enterprise (GRE) supports the Inflation Reduction Act to incentivize investments in clean energy vital to our national sustainability, energy security & job creation goals. The portion of the Inflation Reduction Act (IRA) focusing on clean hydrogen is of great interest to local economic development. Plug Power is investing in a 74-ton per day green hydrogen production facility at the Science & Technology Advanced Manufacturing Park (STAMP) in the Greater Rochester, New York region. The STAMP site focuses on returning advanced manufacturing to Upstate New York in a sustainable manner, given a large portion of the electric power energizing companies at the location is hydropower from the New York Power Authority's (NYPA) Niagara Hydropower project.

We believe the 45V rules as proposed are constraining and limit innovative early adopter firms such as Plug Power from qualifying for the Hydrogen Tax Credit. The proposed 45V rules appear to contradict Congressional intent and plain statutory text by limiting early adopter firms rendering them unable to qualify for the 45V credit. If adopted as proposed, projects that commenced construction before the proposed rules were issued are likely to be cancelled or reduced in scope.

Below are five concerns we ask you to consider when adjusting the proposed rules to better align with statutory intent:

- 1) **Grandfathering Protections:** The final regulation should include grandfathering provisions that i) allow hydrogen producers to rely on the regulatory framework in place at the onset of the facility's construction through the producer's ten-year Section 45V credit; and ii) exempt from the incrementality, time-matching, and deliverability requirements clean hydrogen projects that began construction after passage of the IRA but prior to publication of the final regulation.
- 2) **Clean Energy Standards:** New York has implemented clean energy standards codified in the Climate Leadership & Community Protection Act (CLCPA). The CLCPA requires New York to source 70% of its electricity via renewable resources by 2030 and 100% by 2040. Should green hydrogen projects increase load resulting in induced emissions, the impact would be temporary, declining significantly by 2030 and disappearing by 2040. Notably, Plug Power's project at STAMP is located near NYPA's Niagara Hydropower project in a region with low average emissions intensity of electricity. The Plug project will cause minimal emissions and decline significantly by 2030 and be eliminated by 2040.

- 3) **Meaningful Access to Clean Baseload Power:** GRE respectfully maintains the proposed incrementality requirement exceeds Congress' delegation of authority to Treasury in Section 45V violating the Administrative Procedure Act. If Treasury continues to include incrementality in the final rules, it should afford several pathways for hydrogen producers to access hydroelectric, nuclear, and other clean baseload power resources. The Notice of Proposed Rulemaking seeks comments on alternative frameworks. GRE appreciates Treasury's willingness to consider alternatives noting that an incrementality framework must include: i) an allowance of 10% of a power producer's minimal-emitting generation (e.g. nuclear and hydroelectric); ii) risk of relicensing and curtailment exceptions; and iii) an option for hydrogen producers to submit data demonstrating zero or minimal induced grid emissions in any given case (or category of cases).
- 4) **Access to Energy Imports from Adjacent Regions to Satisfy Any Deliverability Requirement.** As with incrementality and temporal matching, there is no basis for Section 45V to impose deliverability requirements. If such a requirement is imposed, it must allow for power from adjacent regions. If a hydrogen producer can prove that power produced from a generator outside the region is delivered into the same region as the facility, then the hydrogen producer should be allowed to utilize EACs from that generator.
- 5) **Annual Aggregation of all Hydrogen is Impermissible and Any Verified Amount of Qualified Clean Hydrogen Should be Eligible for the Section 45V Credit.** Proposed 1.45V-4(a) must be modified allowing a qualified clean hydrogen production facility to claim the Section 45V credit for any amount of hydrogen produced over any period within a given year. As drafted, the proposed provision requires a taxpayer to include all hydrogen produced each year in the calculation of the average emissions intensity to determine the 45V Credit.

To conclude, the constraining nature of the 45V proposed rules could cause collateral damage for our community, region and industries locating at the STAMP Mega-Site. Given Plug Power is developing shared infrastructure at STAMP – any reduced investments due to proposed 45V rules could impair infrastructure development serving the entire site. This would impact projects considering the site including semiconductor firms supported by the CHIPS Act thereby impacting re-shoring of semiconductor investments and job creation in those key sectors.